

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Timothy M. Avery, #122721, a/k/a)	
Timothy Maurice Avery,)	C/A No.: 2:06-0393-MBS
)	
Petitioner,)	
)	
vs.)	
)	
Raymond Reed, Warden; and Henry)	ORDERR
McMaster, Attorney General for)	
South Carolina,)	
)	
Respondents.)	
)	

Petitioner Timothy M. Avery is an inmate in custody of the South Carolina Department of Corrections who currently is housed at Manning Correctional Institution in Columbia, South Carolina. Petitioner, appearing pro se, filed a petition under 28 U.S.C. § 2254 for writ of habeas corpus on February 8, 2006.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. The Magistrate Judge issued a Report and Recommendation on February 28, 2006 in which he recommended that the petition be dismissed because Petitioner has not exhausted his state remedies as required by 28 U.S.C. § 2254(b). Petitioner has filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 .S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The case is dismissed without prejudice and without requiring Respondents to file a return.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

March 22, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.